

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DOGAN AND MELIA IUSUF	:	DETERMINATION
		DTA NO. 822078
for Redetermination of a Deficiency or for Refund of New	:	
York State and New York City Personal Income Taxes	:	
under Article 22 of the Tax Law and the Administrative	:	
Code for the City of New York for the Year 2005.	:	

Petitioners, Dogan and Melia Iusuf, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the Administrative Code for the City of New York for the year 2005.

On June 5, 2008 and June 11, 2008, respectively, petitioners, appearing pro se, and the Division of Taxation, appearing by Daniel Smirlock, Esq. (Margaret T. Neri, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs submitted by December 17, 2008, which date commenced the six-month period for the issuance of this determination. After review of the documents and arguments submitted, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether petitioners are entitled to federal adjustments to income consisting of a student loan interest deduction in the amount of \$2,421.50 and a tuition and fees deduction in the amount of \$4,000.00 for the year 2005.

II. Whether petitioners are entitled to a child and dependent care credit for the year 2005.

FINDINGS OF FACT

1. Petitioners, Dogan and Melia Iusuf, timely filed their joint New York State and City resident personal income tax return for the 2005 tax year. On this return, petitioners reported federal adjusted gross income in the amount of \$64,948.00 which consisted of wages of \$65,010.49, taxable interest income of \$375.91 and a \$438.00 adjustment to income for an “IRA Deduction.” After claiming the standard deduction of \$14,600.00 (married filing jointly) and a dependent exemption of \$1,000.00, petitioners reported taxable income of \$49,348.00, and calculated total New York State and City tax due for 2005 of \$2,640.00, consisting of New York State tax due in the amount of \$2,484.00 and New York City resident tax due in the amount of \$156.00. Against tax computed due of \$2,640.00, petitioners showed credits and payments totaling \$4,829.00, consisting of a City of New York school tax credit of \$125.00, New York State tax withheld of \$2,955.00 and New York City resident tax withheld of \$1,749.00, and claimed a refund of \$2,189.00.

2. The Division of Taxation (Division) processed petitioners’ 2005 tax return and found that they incorrectly computed the New York State and New York City tax due on their reported taxable income of \$49,348.00. Using the 2005 State and City tax tables, the Division determined total taxes to be due in the amount of \$4,195.00, consisting of New York State tax of \$2,585.00 and New York City resident tax of \$1,610.00. The Division issued a Notice of Adjusted Refund, dated May 16, 2006, recalculating petitioners’ return for the year 2005 using the amounts of tax due pursuant to the 2005 New York tax tables for State and City tax, and issued an adjusted refund in the amount of \$634.26.

3. On June 19, 2006, petitioners filed a Claim for Credit or Refund of Personal Income Tax, Form IT-113-X, requesting a refund of \$1,674.84. In their request, petitioners sought a

refund of \$1,554.84, the disallowed portion of the refund claimed on the original return because the taxes were miscalculated by the Division, and an additional refund of \$120.00 for the New York child and dependent care credit. Supporting documents attached to petitioners' refund claim included a revised New York State and City resident income tax return for the year 2005 (revised 2005 tax return), a Form IT-216, Claim for Child and Dependent Care Credit, a Form IT-2, Summary of Federal Form W-2 Statements for the year 2005, a copy of the May 16, 2006 Notice of Adjusted Refund, and the Notice of Taxpayer Rights, Adjusted Refunds/Credits. On Form IT-216, Claim for Child and Dependent Care Credit, petitioners failed to report the name, address and identifying number of any persons or organizations who provided care, the amount paid to such care provider, and the amount of qualified care expenses paid in 2005 for their qualifying child, Sarah Iusuf, born in 2002. Petitioners did not provide any information to substantiate the claimed child and dependent care credit of \$120.00.

4. By Notice of Disallowance dated April 27, 2007, the Division disallowed petitioners' claim for refund for the following reasons:

Based upon tax department records your IT-150 for the tax year 2005 was computed incorrectly. Your New York State and New York City tax was erroneously calculated.

Also your claim for the Child and Dependent Care Credit cannot be allowed because we cannot verify your child care provider or your qualified expenses.

Your return was recalculated and a check was issued to you in the amount of \$634.26.

Since your return was recalculated and you have already been issued a refund, your request for refund per IT-113X has been denied.

5. Dogan Iusuf appeared at the Bureau of Conciliation and Mediation Services (BCMS) conciliation conference held on October 17, 2007, and agreed to submit additional

documentation in support of petitioners' position. Post-conference, petitioners submitted to the conciliation conferee, among other things, a second Claim for Credit or Refund of Personal Income Tax, dated October 27, 2007, requesting a net refund in the amount of \$749.00 (\$1,333.26 - \$634.26 already refunded) for the year 2005 (second claim for refund), petitioners' second revised 2005 New York State and City resident personal income tax return (second revised 2005 tax return), and a Tuition Statement, Form 1098-T, for the year 2005 (2005 Tuition Statement) issued to Melia Iusuf by ASA Institute of Business and Computer Technology (ASA Institute) in Brooklyn, New York.

6. On the second revised 2005 tax return, petitioners reported federal adjusted gross income in the amount of \$58,864.90, consisting of wages of \$65,010.49, taxable interest income of \$375.91 and \$6,241.50 in federal adjustments to income, i.e., a student loan interest deduction of \$2,421.50 and a tuition and fees deduction of \$4,000.00. After claiming the standard deduction of \$14,600.00 and a dependent exemption of \$1,000.00, petitioners reported taxable income of \$43,264.00, and calculated total New York State and City tax due for 2005 of \$3,566.00, consisting of New York State tax due in the amount of \$2,170.00 and New York City resident tax due in the amount of \$1,396.00. Against tax computed due of \$3,566.00, petitioners showed credits and payments totaling \$4,929.26, consisting of a New York State child and dependent care credit of \$120.00, a City of New York school tax credit of \$125.00, New York State tax withheld of \$2,955.00 and New York City resident tax withheld of \$1,749.00, and claimed a refund of \$1,383.26.

7. The Tuition Statement issued by ASA Institute shows the amounts billed in 2005 to Mrs. Iusuf for qualified tuition and related expenses in the amount of \$2,340.00, and her receipt

of scholarships or grants in the amount of \$2,421.50 in the same year. Petitioners did not submit any documentation to show that they paid interest in 2005 on a qualified education loan.

8. After reviewing all documentation submitted, the conferee issued a Conciliation Order (CMS No. 219262), dated January 4, 2008, which denied petitioners' request and sustained the refund denial dated April 27, 2007.

9. A timely petition challenging the Division's disallowance of petitioners' claim for refund for the year 2005 was filed with the Division of Tax Appeals. In their petition, petitioners assert that they are entitled to federal adjustments to income totaling \$6,421.50, consisting of a student loan interest deduction of \$2,421.50 and a tuition and fees deduction of \$4,000.00, and a child and dependent care credit of \$120.00. They seek an additional refund of \$749.00 for the year 2005.

10. Petitioners did not submit any documentation regarding interest they allegedly paid on a qualified education loan for the year 2005.

11. Petitioners did not submit any documentation substantiating the payment of any child and dependent care expenses for the year 2005.

CONCLUSIONS OF LAW

A. The Division reviewed petitioners' 2005 tax return for mathematical errors pursuant to Tax Law § 681(d) and Administrative Code of New York City § 11-1781(d). The errors discovered by the Division as noted in Finding of Fact 2 resulted in the issuance of an adjusted refund in the amount of \$634.26. The Division properly recalculated petitioners' New York State and City tax liabilities for the year 2005 (*see* Tax Law § 601[a][2]; Administrative Code of New York City § 11-1701[g][1][A]).

B. Petitioners claim that they are entitled to the federal adjustments to income and the child and dependent care credit. As such, they seek an additional refund of \$749.00. The Division asserts that petitioners have failed to prove that they are entitled to the claimed federal adjustments and the child and dependent care credit.

C. The starting point for determining New York personal income tax liability is a taxpayer's federal adjusted gross income (Tax Law § 612[a]; 20 NYCRR 112.1). Section 62(a) of the Internal Revenue Code defines adjusted gross income as an individual's gross income minus certain deductions. Among the deductions permitted is a deduction for interest on education loans (IRC § 221), and a deduction for higher education expenses (IRC § 222). The taxpayer has the double burden of (1) demonstrating entitlement to the deduction and (2) substantiating the amount of the deduction (*see* Tax Law § 658[a]; § 689[e]; 20 NYCRR 158.1; *Matter of Macaluso*, Tax Appeals Tribunal, September 22, 1997 *confirmed* 259 AD2d 795, 686 NYS2d 193 [1999]).

D. Petitioners claim that \$2,421.50 in interest on an education loan should be deducted from their gross income in arriving at their federal adjusted gross income for the year 2005. IRC § 221(a) allows "a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan." Petitioners did not submit any documentation regarding the qualified education loan or the alleged interest paid on such education loan in 2005. As such, the claimed interest on education loan deduction in the amount of \$2,421.50 cannot be allowed.

Petitioners also claim that \$4,000.00 in tuition and fees should be deducted from their gross income in arriving at their federal adjusted gross income for the year 2005. For the year 2005, taxpayers filing a joint return, whose adjusted gross income did not exceed \$130,000.00,

could deduct up to \$4,000.00 in qualified tuition and related expenses (tuition and fees) paid in the year for the enrollment or attendance of the taxpayer, the taxpayer's spouse or dependent at an eligible education institution (*see* IRC § 222[a], [b]). However, IRC § 222(d)(1) further required qualified tuition and related expenses to be reduced by the amount of any scholarship, educational assistance allowance, or other payment (other than gifts, devices, bequests or inheritances) excluded from income for such year. In support of the claimed tuition and fees deduction, petitioners submitted a 2005 Tuition Statement issued by ASA Institute to Melia Iusuf. This tuition statement indicates that ASA billed Mrs. Iusuf for qualified tuition and related expenses totaling \$2,340.00 for the year 2005, and she received scholarships and grants totaling \$2,421.50 for the same year. Since Mrs. Iusuf received scholarships or grants in excess of the amounts billed for qualified tuition and related expenses, no monies were paid by petitioners for qualified tuition and fees for the year 2005. Therefore, petitioners are not entitled to a deduction for qualified tuition and fees for the year 2005 (*see* IRC § 222[d][1]).

E. Tax Law § 606(c) provides that the New York State child and dependent care credit is based upon the federal child and dependent care credit "allowable under section twenty-one of the internal revenue code." The child and dependent care credit allowed pursuant to IRC § 21 is determined based upon a percentage of employment-related expenses, including expenses for the care of a qualified dependent under the age of 13, incurred by a taxpayer to be gainfully employed. IRC § 21(c)(1) places a \$3,000.00 limitation on employment-related expenses for one qualifying dependent, and IRC § 21(d)(1)(B) further provides that in the case of a taxpayer who is married at the close of the tax year, the employment-related expenses cannot exceed the lesser of such taxpayer's earned income or the earned income of the taxpayer's spouse for such year. For purposes of IRC § 21(d)(1), in the case of a spouse who is a student, such spouse shall be

deemed for each month during which such spouse is a full-time student at an educational institution to be gainfully employed and to have earned income of not less than \$250.00 if there is one qualifying dependent for the taxable year (*see* IRC § 21[d][2]).

In this case, petitioners claim a child and dependent care credit of \$120.00. Petitioners did not supply the name, address and identifying number of any persons or organizations who provided care, the amount paid to such care provider, and the amount of qualified care expenses paid in 2005 for their qualifying child. Since petitioners failed to provide identifying information for the care provider and to substantiate the amount of the child expenses incurred in 2005, no child and dependent care credit may be allowed (*see* IRC § 21[e][9]; Tax Law § 689[e]).

F. The petition of Dogan and Melia Iusuf is denied, and the Division's Notice of Disallowance dated April 27, 2007 is sustained.

DATED: Troy, New York
June 11, 2009

/s/ Winifred M. Maloney_____
ADMINISTRATIVE LAW JUDGE